



City of San Marcos

630 East Hopkins
San Marcos, TX 78666

Special Meeting - Final City Council

Wednesday, January 2, 2019

5:30 PM

City Council Chambers

630 E Hopkins - Special Meeting

I. Call To Order

II. Roll Call

1. Receive a Staff presentation and hold a Public Hearing to receive comments for or against an appeal filed by Aquarena Plaza, LLC on behalf of Eskimo Hut regarding the Planning and Zoning Commission's decision to deny the Conditional Use Permit application (CUP-18-29) to allow the sale of beer and wine at 1504 Aquarena Springs Drive Ste. 110, San Marcos, TX 78666; and consider the appeal related to CUP-18-29 filed by Aquarena Plaza, LLC on behalf of Eskimo Hut, by motion.

III. Adjournment.

POSTED ON WEDNESDAY, DECEMBER 26, 2018 AT 2:00PM

JAMIE LEE CASE, CITY CLERK

Notice of Assistance at the Public Meetings

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 855-461-6674 or sent by e-mail to ADArequest@sanmarcostx.gov



Legislation Text

File #: ID#18-891, **Version:** 1

AGENDA CAPTION:

Receive a Staff presentation and hold a Public Hearing to receive comments for or against an appeal filed by Aquarena Plaza, LLC on behalf of Eskimo Hut regarding the Planning and Zoning Commission's decision to deny the Conditional Use Permit application (CUP-18-29) to allow the sale of beer and wine at 1504 Aquarena Springs Drive Ste. 110, San Marcos, TX 78666; and consider the appeal related to CUP-18-29 filed by Aquarena Plaza, LLC on behalf of Eskimo Hut, by motion.

Meeting date: January 2, 2019

Department: Planning and Development Services

Amount & Source of Funding

Funds Required: NA

Account Number: NA

Funds Available: NA

Account Name: NA

Fiscal Note:

Prior Council Action: NA

City Council Strategic Initiative: [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]

- ☐ Economic Development - Choose an item.
- ☐ Environment & Resource Protection - Choose an item.
- ☐ Land Use - Choose an item.
- ☐ Neighborhoods & Housing - Choose an item.
- ☐ Parks, Public Spaces & Facilities - Choose an item.
- ☐ Transportation - Choose an item.
- ☐ Not Applicable

Master Plan: *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

Background Information:

The appellant is the property owner of the proposed Eskimo Hut Location which was denied by the Planning and Zoning Commission on November 13, 2018.

The original applicant was requesting a CUP to sell alcohol to go, to walk up and drive thru customers. They proposed to sell the beverages in sealed plastic bags, a method that has been approved by the Texas Alcoholic Beverage Commission (TABC).

The City of San Marcos Police Chief acknowledged that the sealed bag delivery method complies with the Texas Open Container prohibition. However, Chief Stapp has concerns about the sale of “to go” alcoholic beverages in that such beverages sold in the drive through will likely be consumed while the vehicle is in operation.

This property meets the 300 foot door to door requirement from Single Family zoned property, however, the drive-thru exits in very close proximity to two single family homes. The drive-thru exits onto Zunker Street in a manner that may cause the headlights of exiting vehicles to sweep the front façade of the closest home. The applicant was proposing business hours that last until midnight throughout the week, which could be a nuisance to the residences of the single family home.

Eskimo Hut has traditionally served their drinks in foam based cups. As this type of drink has traditionally been popular with river oriented customers, Staff suggested to the applicant that foam based cups be prohibited. The applicant agreed to serve drinks in paper, plastic, or reusable containers.

Council Committee, Board/Commission Action:

At their regular meeting on November 13, 2018 the Planning and Zoning Commission considered this item during a Public Hearing. The Commission voted to deny the request by a vote of 6 - 2.

Alternatives:

If City Council chooses to approve the request, Staff recommends the following conditions:

- Permit shall be valid for one (1) year, provided standards are met.
- Drinks shall not be served in foam based containers.
- The permit shall become effective upon the issuance of the Certificate of Occupancy.
- The permit shall be posted in the same area and manner as the Certificate of Occupancy.

Recommendation:

Staff reviewed the request recommended **denial** of the request.

CUP-18-29(A) (Eskimo Hut)

CUP-18-29 (Eskimo Hut) – Receive a Staff presentation and hold a Public Hearing to receive comments for or against an appeal filed by Aquarena Plaza, LLC on behalf of Eskimo Hut regarding the Planning and Zoning Commission's decision to deny the Conditional Use Permit application (CUP-18-29) to allow the sale of beer and wine at 1504 Aquarena Springs Drive Ste. 110, San Marcos, TX 78666; and consider the appeal related to CUP-18-29 filed by Aquarena Plaza, LLC on behalf of Eskimo Hut, by motion.

Conditional Use Permit Appeal


- This case is an appeal of a decision made by the Planning Commission on November 13, 2018.
- The Planning Commission voted to deny the Conditional Use Permit application by a vote of 6-2.
- The property owner of the proposed Eskimo Hut location is appealing the decision, not the business owner.

Location:

- Eskimo Hut is proposing to be located at the intersection of Aquarena Springs Drive and Zunker Drive.
- Located within a High Intensity Zone as designated on the Preferred Scenario Map.



CUP-18-29
1504 Aquarena Dr. Ste 110
Eskimo Hut
Map Date: 10/26/2018

 Subject Property



0 150 300 600 Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



Context & History:

- There have been Eskimo Huts in San Marcos in the past. This is a different owner.
- The San Marcos Police Chief has concerns about the sale of to-go beverages.
- The proposed hours of operation are 12 p.m. to 12 a.m. Monday – Saturday and 12 p.m. to 10 a.m. on Sunday.
- There will be one table inside and no outdoor seating.



Aerial with Zoning Image



To-Go Beverages

- Police Chief concerned that beverages sold in a to-go manner will be consumed while vehicles are in operation.
- The manner in which the beverages are sold is approved by TABC.
- Generally served in a foam cup with a sealed plastic bag.
- Original applicant has agreed to not use foam cups if CUP approved.





Staff Recommendation:

Staff recommended **Denial** of the Conditional Use Permit.

Planning and Zoning Commission Action:

At their regularly scheduled meeting on November 13, 2018 the Planning and Zoning Commission considered this item and voted to **Deny** the request by a vote of 6-2.

Alternate Recommendation:

If the Council chooses to approve the request, Staff recommends the following conditions:

- Permit shall be valid for one (1) year, provided standards are met.
- Drinks shall not be served in foam based containers.
- The permit shall become effective upon the issuance of the Certificate of Occupancy.
- The permit shall be posted in the same area and manner as the Certificate of Occupancy.



Cover Memo

To:	City Council
From:	Planning & Development Services – Will Parrish, CNU-A
Date:	December 13, 2018
Re:	Eskimo Hut Conditional Use Permit Appeal (1504 Aquarena Springs Drive Ste. 110)

At their regular meeting on November 13, 2018 the Planning and Zoning Commission considered this item during a Public Hearing.

Public Notification:

- *Planning and Zoning Commission: Personal and Posted notification was completed on October 26, 2018.*
- *City Council: Personal and Posted notification was completed on December 14, 2018.*

See attached map and list.

Correspondence:

None

November 13, 2018 Citizen Comment & Public Hearing:

- | | |
|------------------------|---------------------------------|
| <i>For:</i> | <i>Against:</i> |
| 1. <i>Nelson Riley</i> | 1. <i>Lisa Marie Coppoletta</i> |
| 2. <i>Jason Mock</i> | |
| 3. <i>Vance Elliot</i> | |

November 13, 2018 Planning & Zoning Commission Action:

A motion was made by Commissioner McCarty, seconded by Chairman Garber, that Conditional Use Permit be denied. The motion carried by the following vote:

For: 6 – Commissioner Rand, Commissioner Baker, Commissioner Ramirez, Commissioner Gleason, Chair Garber and Commissioner McCarty

Against: 2 - Commissioner Porterfield and Commissioner Dillion

Recused: 0

Attachments:

1. *Notification map*
2. *Property owner list*

Conditional Use Permit	1504 Aquarena Springs Drive Ste. 110
CUP-18-29(A)	Eskimo Hut



Summary

Request:	A Conditional Use Permit for the sale of beer and wine.		
Applicant:	Aquarena Plaza LLC 1801 Chalk Rock CV Austin, TX 78735	Property Owner:	Aquarena Plaza LLC 1801 Chalk Rock CV Austin, TX 78735
CUP Expiration:	N/A	Type of CUP:	Beer and Wine
Interior Floor Area:	2600 square feet	Outdoor Floor Area:	NA
Parking Required:	1	Parking Provided:	Yes
Days & Hours of Operation:	Monday - Saturday: 12 p.m. to 12 a.m. Sunday 12 p.m. to 10 p.m.		

Notification

Application:	N/A	Neighborhood Meeting:	N/A
Published:	N/A	# of Participants:	N/A
Posted:	October 26, 2018 December 14, 2018	Personal:	October 26, 2018 December 14, 2018
Response:	At the November 13, 2018 Planning and Zoning Commission meeting, three people spoke in favor of the application, one person spoke against.		

Property Description

Legal Description:	Aquarena Plaza, Lot 1		
Location:	Intersection of Aquarena Springs Drive and Zunker Street		
Acreage:	1.925	Central Business Area:	No
Existing Zoning:	Community Commercial	Preferred Scenario:	High Intensity
Existing Use:	Retail/Vacant	Proposed Use:	To-Go alcohol sales
CONA Neighborhood:	Millview West	Sector:	5
Utility Capacity:	Adequate	Floodplain:	No
Historic District	N/A		

Surrounding Area

	Zoning	Existing Land Use	Preferred Scenario
North of Property:	CC/MU	Retail	High Intensity
South of Property:	SF-6	Residential	High Intensity
East of Property:	CC	Retail	High Intensity
West of Property:	CC/MU	Office/Restaurant	High Intensity

Conditional Use Permit	1504 Aquarena Springs Drive Ste. 110
CUP-18-29(A)	Eskimo Hut



History

The appellant is the property owner of the proposed Eskimo Hut Location which was denied by the Planning and Zoning Commission on November 13, 2018.

The original applicant was requesting a CUP to sell alcohol to go, to walk up and drive thru customers. They proposed to sell the beverages in sealed plastic bags, a method that has been approved by the Texas Alcoholic Beverage Commission (TABC).

Eskimo Hut is a franchise chain located primarily in Texas. A franchise was previously located in San Marcos, however this applicant is a separate franchise, and not the same owner as previous San Marcos Eskimo Huts. This applicant does operate Eskimo Huts in San Antonio.

Additional Analysis

This property meets the 300 foot door to door requirement from Single Family zoned property, however, the drive-thru exits in very close proximity to two single family homes. The drive-thru exits onto Zunker Street in a manner that may cause the headlights of exiting vehicles to sweep the front façade of the closest home. The applicant is proposing business hours that last until midnight throughout the week, which could be a nuisance to the residences of the single family home.

Eskimo Hut has traditionally served their drinks in foam based cups. As this type of drink has traditionally been popular with river oriented customers, Staff suggested to the applicant that foam based cups be prohibited. The applicant agreed to serve drinks in paper, plastic, or reusable containers.

Comments from Other Departments

Police	Chief Stapp acknowledges that the sealed bag delivery method complies with the Texas Open Container prohibition. However, Chief Stapp has concerns about the sale of "to go" alcoholic beverages in that such beverages sold in the drive through will likely be consumed while the vehicle is in operation.
Fire	No Comment
Public Services	No Comment
Engineering	No Comment

Staff Recommendation

Approval as Submitted	Approval with Conditions / Alternate	Denial <u>X</u>
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Commission Action

Approval as Submitted	Approval with Conditions / Alternate	<u>X</u>	Denial
The Planning and Zoning Commission voted to deny the CUP by a 6-2 vote.			

Conditional Use Permit	1504 Aquarena Springs Drive Ste. 110
CUP-18-29(A)	Eskimo Hut



Alternate Recommendation

If Council chooses to approve the request, Staff recommends the following conditions:

- Permit shall be valid for one (1) year, provided standards are met.
- Drinks shall not be served in foam based containers.
- The permit shall become effective upon the issuance of the Certificate of Occupancy.
- The permit shall be posted in the same area and manner as the Certificate of Occupancy.

Staff: Will Parrish, CNU-A

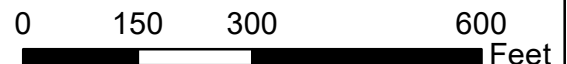
Title : Planner

Date: December 18, 2018

Evaluation			Criteria for Approval (Sec. 2.8.3.4 & 5.1.5.5)
Consistent	Inconsistent	Neutral	
		<u>X</u>	The proposed use at the specified location is consistent with the policies embodied in the adopted comprehensive plan.
		<u>N/A</u>	The proposed use is consistent with any adopted neighborhood character study for the area. Neighborhood Character Studies have not been completed for this area.
<u>X</u>			The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.
	<u>X</u>		The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods.
<u>X</u>			The proposed use does not generate pedestrian and vehicular traffic which shall be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
	<u>X</u>		The proposed use incorporates roadway adjustments, traffic control devices or mechanisms and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets.
	<u>X</u>		The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties.
	<u>X</u>		The proposed use meets the standards for the applicable district, or to the extent variations from such standards have been requested that such variations are necessary to render the use compatible with adjoining development and the neighborhood.
<u>X</u>			The proposed use is not within 300 ft. of a detached single family residence located in a zoning district that only permits detached single family residences.
<u>X</u>			The proposed use is not within 300 ft. of a church, public or private school, or public hospital.
<u>X</u>			The proposed use is not within 1,000 ft. of a public or private school as outlined within section 1.5.1.1.



CUP-18-29(A)
1504 Aquarena Dr. Ste 110
Eskimo Hut
Map Date: 12/13/2018



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Notification List

Owner	Address	City	State
112 MILL STREET LLC	131 RIVER BEND RD	WIMBERLEY	TX
1360 PALM SQUARE LLC	2269 CHESTNUT ST Suite # 224	SAN FRANCISCO	CA
1640 AQUARENA SPRINGS LLC	600 CONGRESS AVE STE 1400	AUSTIN	TX
BAKER BARNEY & BAKER LA DAWN & COZBY KIMBERLY & BAKER KEVIN	7923 RR 2341	BURNET	TX
CBP PROPERTIES LP Attn: TEXAS LP	1515 AQUARENA SPRINGS DR	SAN MARCOS	TX
CENTRAL TEXAS LIFE CARE	115 WARDEN LN	SAN MARCOS	TX
CHAMBERS MATTHEW J	1252 SAN ANTONIO ST	SAN MARCOS	TX
CHAMBERS THOMAS L & PATRICIA J	10 WOODS EDGE LN	HOUSTON	TX
CHILDRESS JO ANN FAMILY PARTNERSHIP LTD	2379 MISTY LN	MAXWELL	TX
CHILDRESS, DAVID JORDAN	2379 MISTY LN	MAXWELL	TX
COCHRAN GERALD & LINDA	P O BOX 369	PRAIRIE LEA	TX
COMBS EARL ESTATE DICKERSON APRIL MICHELLE IND EXEC	P O BOX 256	SAN MARCOS	TX
CRISMIER CHARLES III & KATHLEEN M LIVING TRUST CRISMIER CHARLES III & KATHLEEN M TRUSTEES	209 DRYDEN LN	RICHMOND	VA
DOUBLE FENG LLC	711 STURGEON ST	SAN MARCOS	TX
ENDSLEY WAYLAND J & CHARLOTTE A	1508 AQUARENA SPRINGS DR	SAN MARCOS	TX
GLOVER, DAVID W	P O BOX 786	SAN MARCOS	TX
HANZEL, DAVID	605 ZUNKER ST	SAN MARCOS	TX
HAVEN AT THORPE LANE LLC	675 BERING STE 550	HOUSTON	TX
JOHNSON, ROSALEE	600 LEAH AVE APT 1505	SAN MARCOS	TX
MAMACITAS	215 JUNCTION HWY	KERRVILLE	TX
MATEOS RAQUEL	204 MILL ST	SAN MARCOS	TX
MCCROCKLIN JOHN & ASSOCIATES INC	P O BOX 2	SAN MARCOS	TX
OMAI INVESTMENTS LLC	828 LAGO VISTA ST	SAN MARCOS	TX
ROMAN HOMERO & MARTA	112 PINTO LN	SAN MARCOS	TX
SAN MARCOS CITY OF HOUSING AUTHORITY	1201 THORPE LN	SAN MARCOS	TX

SAN MARCOS STADIUM PLAZA LLC	1801 CHALK ROCK CV	AUSTIN	TX
SAN MARCOS STUDENT LIVING DST	PO BOX 3666 ATTN: PROPERTY TAX DEPT	OAK BROOK	IL
SUPER STOP INC	P O BOX 1466	SAN MARCOS	TX
SWEET ORCHID LLC	263 TEXAS 337 LOOP # 199	NEW BRAUNFELS	TX
TEXAS STATE UNIVERSITY-SAN MARCOS Attn: VP FOR FINANCE AND SUPPORT SERVICES	601 UNIVERSITY DR	SAN MARCOS	TX
UNDERWOOD DARREL D & SHANNA H	12800 TRAUTWEIN	DRIPPING SPRINGS	TX
WADE, JOHN T	207 W MIMOSA CIR	SAN MARCOS	TX
Elena Duran	133 LAGO VISTA ST	SAN MARCOS	TX
Sara Lee Underwood	1415 HARPER DR	SAN MARCOS	TX



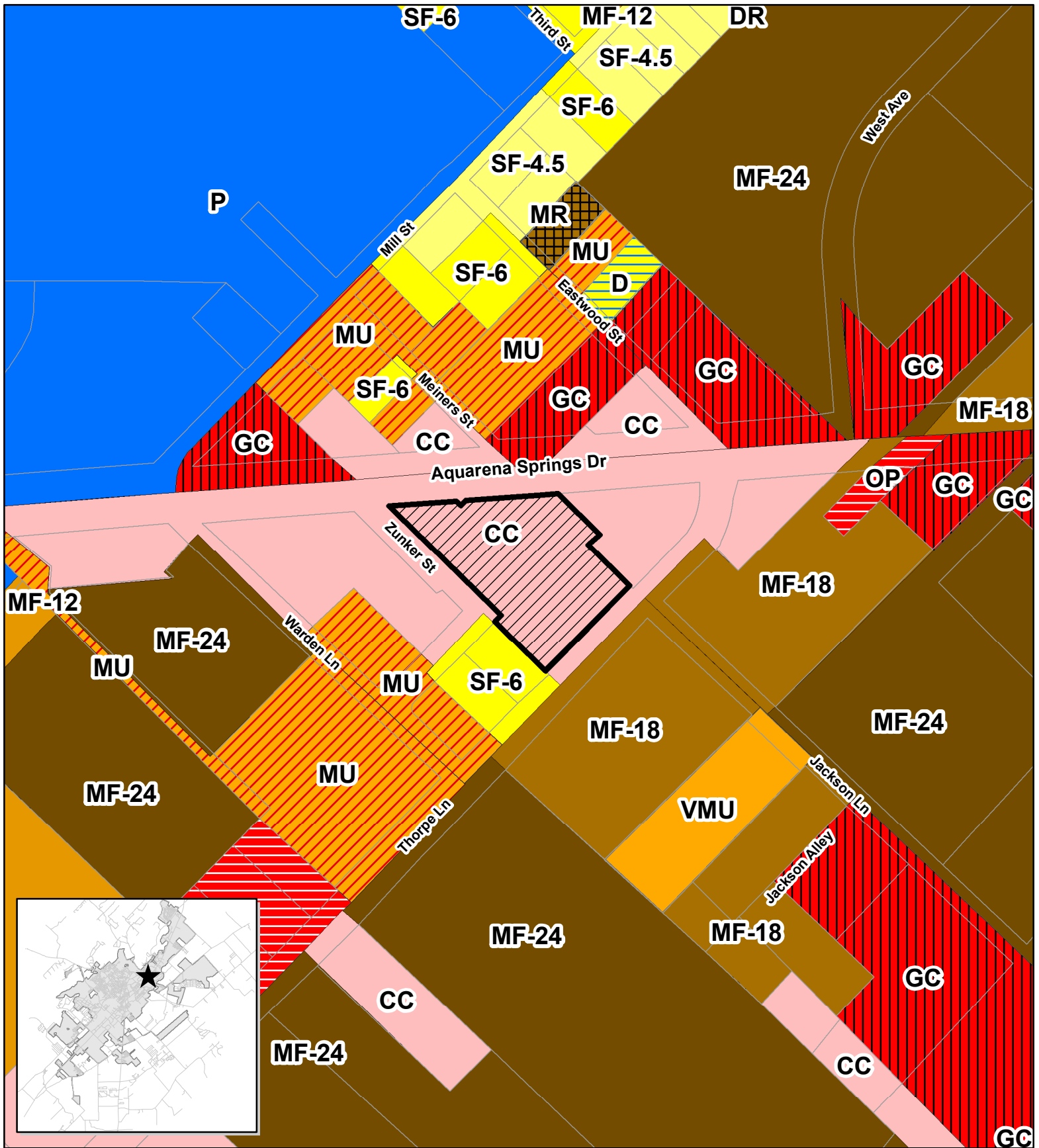
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1504 Aquarena Dr. Ste 110
Eskimo Hut
Map Date: 10/26/2018

 Subject Property




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CUP-18-29
1504 Aquarena Dr. Ste 110
Eskimo Hut
Map Date: 11/1/2018

 Subject Property



0 150 300 600 Feet

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ZUNKER ST

CC

THORPE LN

MU

SF-6

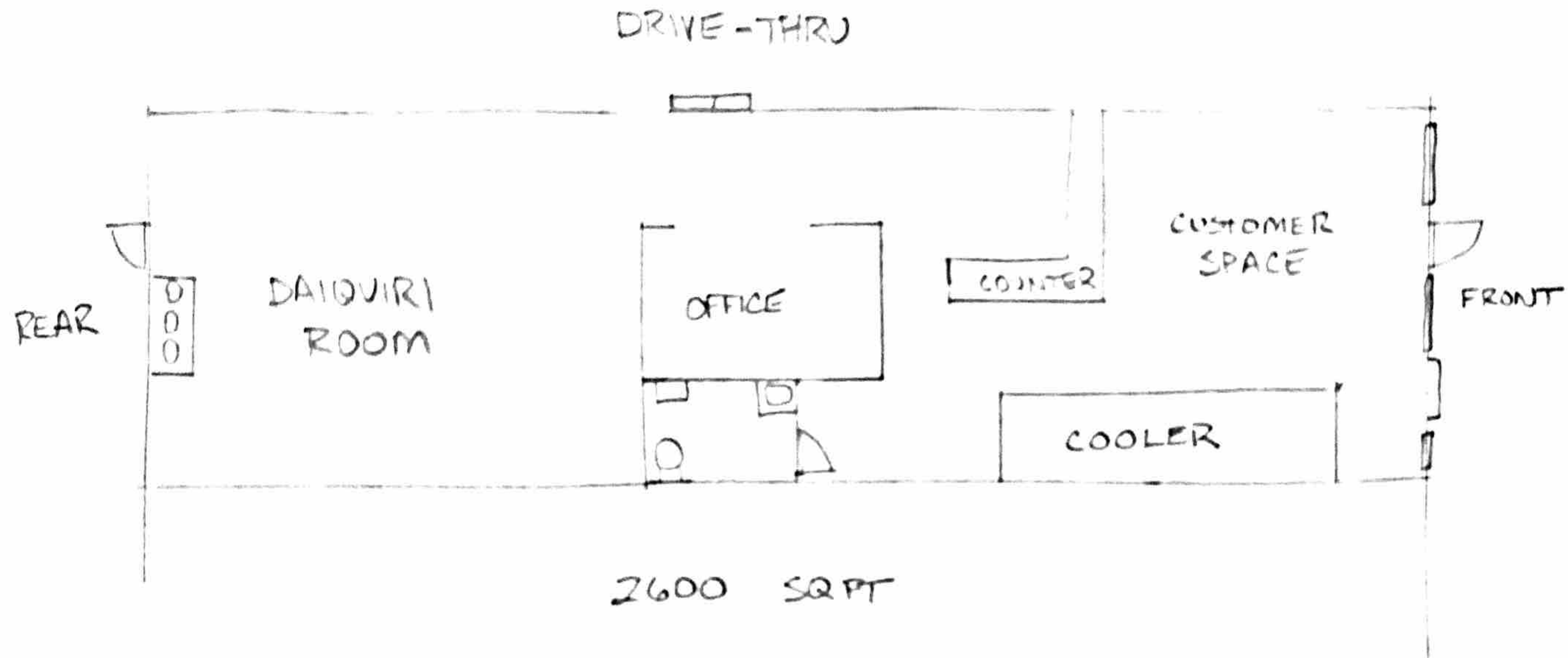
MF-18

ESKIMO HUT, TEXAS



www.eskimohut.com

1504 AGUARENA SPRINGS DR.
SUITE 110



ESKIMO HUT
PROPOSED
FLOOR PLAN